
SENATE BILL 5400

State of Washington

65th Legislature

2017 Regular Session

By Senators Zeiger, O'Ban, Hunt, Rivers, Cleveland, Becker, McCoy, Rolfes, Hobbs, Keiser, and Wellman

Read first time 01/23/17. Referred to Committee on Human Services, Mental Health & Housing.

1 AN ACT Relating to disclosure of health-related information with
2 persons with a close relationship with a patient; amending RCW
3 70.02.010, 70.02.050, and 70.02.230; reenacting and amending RCW
4 70.02.010 and 70.02.230; adding a new section to chapter 70.02 RCW;
5 providing an effective date; and providing an expiration date.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 NEW SECTION. **Sec. 1.** A new section is added to chapter 70.02
8 RCW to read as follows:

9 (1)(a) A health care provider may use or disclose protected
10 health information of an individual without obtaining an
11 authorization from the individual or the individual's personal
12 representative if the conditions in (b) of this subsection are met
13 and:

14 (i) The disclosure is to a family member, other relative, a close
15 personal friend, or other person identified by the individual, and
16 the protected health information is directly relevant to the person's
17 involvement with the individual's health care; or

18 (ii) The disclosure is for the purpose of notifying a family
19 member, a personal representative of the individual, or another
20 person responsible for the care of the individual or the individual's
21 location, general condition, or death.

1 (b) A health care provider may make the disclosures described in
2 (a) of this subsection if:

3 (i) The individual is not present or obtaining the individual's
4 authorization is not practicable due to the individual's incapacity
5 or an emergency circumstance, and in the exercise of professional
6 judgment and based on reasonable inferences, the health care provider
7 determines that the disclosure is in the best interests of the
8 individual; or

9 (ii) The individual is present and the health care provider gives
10 the individual an opportunity to object to the disclosure, and the
11 individual does not express an objection, or the health care provider
12 reasonably infers from the circumstances, based on the exercise of
13 professional judgment, that the individual does not object to the
14 disclosure.

15 (2) With respect to an individual who is being treated for a
16 mental illness, the protected health information disclosed under this
17 section may include, to the extent consistent with the health care
18 provider's professional judgment and standards of ethical conduct:

19 (a) The individual's diagnoses and the treatment recommendations;

20 (b) Issues concerning the safety of the individual, including
21 risk factors for suicide, steps that can be taken to make the
22 individual's home safer, and a safety plan to monitor and support the
23 individual;

24 (c) Information about resources that are available in the
25 community to help the individual, such as case management and support
26 groups; and

27 (d) The process to ensure that the individual safely transitions
28 to a higher or lower level of care, including an interim safety plan.

29 (3) Any disclosure of protected health information under this
30 section must be limited to the minimum necessary to accomplish the
31 purpose of the disclosure.

32 (4) A health care provider is not subject to any civil liability
33 for making a disclosure in accordance with this section.

34 **Sec. 2.** RCW 70.02.010 and 2014 c 225 s 70 and 2014 c 220 s 4 are
35 each reenacted and amended to read as follows:

36 The definitions in this section apply throughout this chapter
37 unless the context clearly requires otherwise.

38 (1) "Admission" has the same meaning as in RCW 71.05.020.

1 (2) "Audit" means an assessment, evaluation, determination, or
2 investigation of a health care provider by a person not employed by
3 or affiliated with the provider to determine compliance with:

4 (a) Statutory, regulatory, fiscal, medical, or scientific
5 standards;

6 (b) A private or public program of payments to a health care
7 provider; or

8 (c) Requirements for licensing, accreditation, or certification.

9 (3) "Commitment" has the same meaning as in RCW 71.05.020.

10 (4) "Custody" has the same meaning as in RCW 71.05.020.

11 (5) "Deidentified" means health information that does not
12 identify an individual and with respect to which there is no
13 reasonable basis to believe that the information can be used to
14 identify an individual.

15 (6) "Department" means the department of social and health
16 services.

17 (7) "Designated mental health professional" has the same meaning
18 as in RCW 71.05.020 or 71.34.020, as applicable.

19 (8) "Detention" or "detain" has the same meaning as in RCW
20 71.05.020.

21 (9) "Directory information" means information disclosing the
22 presence, and for the purpose of identification, the name, location
23 within a health care facility, and the general health condition of a
24 particular patient who is a patient in a health care facility or who
25 is currently receiving emergency health care in a health care
26 facility.

27 (10) "Discharge" has the same meaning as in RCW 71.05.020.

28 (11) "Evaluation and treatment facility" has the same meaning as
29 in RCW 71.05.020 or 71.34.020, as applicable.

30 (12) "Federal, state, or local law enforcement authorities" means
31 an officer of any agency or authority in the United States, a state,
32 a tribe, a territory, or a political subdivision of a state, a tribe,
33 or a territory who is empowered by law to: (a) Investigate or conduct
34 an official inquiry into a potential criminal violation of law; or
35 (b) prosecute or otherwise conduct a criminal proceeding arising from
36 an alleged violation of law.

37 (13) "General health condition" means the patient's health status
38 described in terms of "critical," "poor," "fair," "good,"
39 "excellent," or terms denoting similar conditions.

1 (14) "Health care" means any care, service, or procedure provided
2 by a health care provider:

3 (a) To diagnose, treat, or maintain a patient's physical or
4 mental condition; or

5 (b) That affects the structure or any function of the human body.

6 (15) "Health care facility" means a hospital, clinic, nursing
7 home, laboratory, office, or similar place where a health care
8 provider provides health care to patients.

9 (16) "Health care information" means any information, whether
10 oral or recorded in any form or medium, that identifies or can
11 readily be associated with the identity of a patient and directly
12 relates to the patient's health care, including a patient's
13 deoxyribonucleic acid and identified sequence of chemical base pairs.
14 The term includes any required accounting of disclosures of health
15 care information.

16 (17) "Health care operations" means any of the following
17 activities of a health care provider, health care facility, or third-
18 party payor to the extent that the activities are related to
19 functions that make an entity a health care provider, a health care
20 facility, or a third-party payor:

21 (a) Conducting: Quality assessment and improvement activities,
22 including outcomes evaluation and development of clinical guidelines,
23 if the obtaining of generalizable knowledge is not the primary
24 purpose of any studies resulting from such activities; population-
25 based activities relating to improving health or reducing health care
26 costs, protocol development, case management and care coordination,
27 contacting of health care providers and patients with information
28 about treatment alternatives; and related functions that do not
29 include treatment;

30 (b) Reviewing the competence or qualifications of health care
31 professionals, evaluating practitioner and provider performance and
32 third-party payor performance, conducting training programs in which
33 students, trainees, or practitioners in areas of health care learn
34 under supervision to practice or improve their skills as health care
35 providers, training of nonhealth care professionals, accreditation,
36 certification, licensing, or credentialing activities;

37 (c) Underwriting, premium rating, and other activities relating
38 to the creation, renewal, or replacement of a contract of health
39 insurance or health benefits, and ceding, securing, or placing a
40 contract for reinsurance of risk relating to claims for health care,

1 including stop-loss insurance and excess of loss insurance, if any
2 applicable legal requirements are met;

3 (d) Conducting or arranging for medical review, legal services,
4 and auditing functions, including fraud and abuse detection and
5 compliance programs;

6 (e) Business planning and development, such as conducting cost-
7 management and planning-related analyses related to managing and
8 operating the health care facility or third-party payor, including
9 formulary development and administration, development, or improvement
10 of methods of payment or coverage policies; and

11 (f) Business management and general administrative activities of
12 the health care facility, health care provider, or third-party payor
13 including, but not limited to:

14 (i) Management activities relating to implementation of and
15 compliance with the requirements of this chapter;

16 (ii) Customer service, including the provision of data analyses
17 for policy holders, plan sponsors, or other customers, provided that
18 health care information is not disclosed to such policy holder, plan
19 sponsor, or customer;

20 (iii) Resolution of internal grievances;

21 (iv) The sale, transfer, merger, or consolidation of all or part
22 of a health care provider, health care facility, or third-party payor
23 with another health care provider, health care facility, or third-
24 party payor or an entity that following such activity will become a
25 health care provider, health care facility, or third-party payor, and
26 due diligence related to such activity; and

27 (v) Consistent with applicable legal requirements, creating
28 deidentified health care information or a limited dataset for the
29 benefit of the health care provider, health care facility, or third-
30 party payor.

31 (18) "Health care provider" means a person who is licensed,
32 certified, registered, or otherwise authorized by the law of this
33 state to provide health care in the ordinary course of business or
34 practice of a profession.

35 (19) "Human immunodeficiency virus" or "HIV" has the same meaning
36 as in RCW 70.24.017.

37 (20) "Imminent" has the same meaning as in RCW 71.05.020.

38 (21) "Information and records related to mental health services"
39 means a type of health care information that relates to all
40 information and records compiled, obtained, or maintained in the

1 course of providing services by a mental health service agency or
2 mental health professional to persons who are receiving or have
3 received services for mental illness. The term includes mental health
4 information contained in a medical bill, registration records, as
5 defined in RCW 71.05.020, and all other records regarding the person
6 maintained by the department, by regional support networks and their
7 staff, and by treatment facilities. The term further includes
8 documents of legal proceedings under chapter 71.05, 71.34, or 10.77
9 RCW, or somatic health care information. For health care information
10 maintained by a hospital as defined in RCW 70.41.020 or a health care
11 facility or health care provider that participates with a hospital in
12 an organized health care arrangement defined under federal law,
13 "information and records related to mental health services" is
14 limited to information and records of services provided by a mental
15 health professional or information and records of services created by
16 a hospital-operated (~~community mental~~) behavioral health program as
17 defined in RCW 71.24.025(~~(+6)~~). The term does not include
18 psychotherapy notes.

19 (22) "Information and records related to sexually transmitted
20 diseases" means a type of health care information that relates to the
21 identity of any person upon whom an HIV antibody test or other
22 sexually transmitted infection test is performed, the results of such
23 tests, and any information relating to diagnosis of or treatment for
24 any confirmed sexually transmitted infections.

25 (23) "Institutional review board" means any board, committee, or
26 other group formally designated by an institution, or authorized
27 under federal or state law, to review, approve the initiation of, or
28 conduct periodic review of research programs to assure the protection
29 of the rights and welfare of human research subjects.

30 (24) "Legal counsel" has the same meaning as in RCW 71.05.020.

31 (25) "Local public health officer" has the same meaning as in RCW
32 70.24.017.

33 (26) "Maintain," as related to health care information, means to
34 hold, possess, preserve, retain, store, or control that information.

35 (27) "Mental health professional" means a psychiatrist,
36 psychologist, psychiatric advanced registered nurse practitioner,
37 psychiatric nurse, or social worker, and such other mental health
38 professionals as may be defined by rules adopted by the secretary of
39 social and health services under chapter 71.05 RCW, whether that
40 person works in a private or public setting.

1 (28) "Mental health service agency" means a public or private
2 agency that provides services to persons with mental disorders as
3 defined under RCW 71.05.020 or 71.34.020 and receives funding from
4 public sources. This includes evaluation and treatment facilities as
5 defined in RCW 71.34.020, community mental health service delivery
6 systems, or community mental health programs, as defined in RCW
7 71.24.025, and facilities conducting competency evaluations and
8 restoration under chapter 10.77 RCW.

9 (29) "Minor" has the same meaning as in RCW 71.34.020.

10 (30) "Parent" has the same meaning as in RCW 71.34.020.

11 (31) "Patient" means an individual who receives or has received
12 health care. The term includes a deceased individual who has received
13 health care.

14 (32) "Payment" means:

15 (a) The activities undertaken by:

16 (i) A third-party payor to obtain premiums or to determine or
17 fulfill its responsibility for coverage and provision of benefits by
18 the third-party payor; or

19 (ii) A health care provider, health care facility, or third-party
20 payor, to obtain or provide reimbursement for the provision of health
21 care; and

22 (b) The activities in (a) of this subsection that relate to the
23 patient to whom health care is provided and that include, but are not
24 limited to:

25 (i) Determinations of eligibility or coverage, including
26 coordination of benefits or the determination of cost-sharing
27 amounts, and adjudication or subrogation of health benefit claims;

28 (ii) Risk adjusting amounts due based on enrollee health status
29 and demographic characteristics;

30 (iii) Billing, claims management, collection activities,
31 obtaining payment under a contract for reinsurance, including stop-
32 loss insurance and excess of loss insurance, and related health care
33 data processing;

34 (iv) Review of health care services with respect to medical
35 necessity, coverage under a health plan, appropriateness of care, or
36 justification of charges;

37 (v) Utilization review activities, including precertification and
38 preauthorization of services, and concurrent and retrospective review
39 of services; and

1 (vi) Disclosure to consumer reporting agencies of any of the
2 following health care information relating to collection of premiums
3 or reimbursement:

4 (A) Name and address;

5 (B) Date of birth;

6 (C) Social security number;

7 (D) Payment history;

8 (E) Account number; and

9 (F) Name and address of the health care provider, health care
10 facility, and/or third-party payor.

11 (33) "Person" means an individual, corporation, business trust,
12 estate, trust, partnership, association, joint venture, government,
13 governmental subdivision or agency, or any other legal or commercial
14 entity.

15 (34) "Professional person" has the same meaning as in RCW
16 71.05.020.

17 (35) "Psychiatric advanced registered nurse practitioner" has the
18 same meaning as in RCW 71.05.020.

19 (36) "Psychotherapy notes" means notes recorded, in any medium,
20 by a mental health professional documenting or analyzing the contents
21 of conversations during a private counseling session or group, joint,
22 or family counseling session, and that are separated from the rest of
23 the individual's medical record. The term excludes mediation
24 prescription and monitoring, counseling session start and stop times,
25 the modalities and frequencies of treatment furnished, results of
26 clinical tests, and any summary of the following items: Diagnosis,
27 functional status, the treatment plan, symptoms, prognosis, and
28 progress to date.

29 (37) "Reasonable fee" means the charges for duplicating or
30 searching the record, but shall not exceed sixty-five cents per page
31 for the first thirty pages and fifty cents per page for all other
32 pages. In addition, a clerical fee for searching and handling may be
33 charged not to exceed fifteen dollars. These amounts shall be
34 adjusted biennially in accordance with changes in the consumer price
35 index, all consumers, for Seattle-Tacoma metropolitan statistical
36 area as determined by the secretary of health. However, where editing
37 of records by a health care provider is required by statute and is
38 done by the provider personally, the fee may be the usual and
39 customary charge for a basic office visit.

40 (38) "Release" has the same meaning as in RCW 71.05.020.

1 (39) "Resource management services" has the same meaning as in
2 RCW 71.05.020.

3 (40) "Serious and urgent threat" means a substantial risk of
4 impending physical harm that requires immediate action or attention.

5 (41) "Serious violent offense" has the same meaning as in RCW
6 71.05.020.

7 ((41)) (42) "Sexually transmitted infection" or "sexually
8 transmitted disease" has the same meaning as "sexually transmitted
9 disease" in RCW 70.24.017.

10 ((42)) (43) "Test for a sexually transmitted disease" has the
11 same meaning as in RCW 70.24.017.

12 ((43)) (44) "Third-party payor" means an insurer regulated
13 under Title 48 RCW authorized to transact business in this state or
14 other jurisdiction, including a health care service contractor, and
15 health maintenance organization; or an employee welfare benefit plan,
16 excluding fitness or wellness plans; or a state or federal health
17 benefit program.

18 ((44)) (45) "Treatment" means the provision, coordination, or
19 management of health care and related services by one or more health
20 care providers or health care facilities, including the coordination
21 or management of health care by a health care provider or health care
22 facility with a third party; consultation between health care
23 providers or health care facilities relating to a patient; or the
24 referral of a patient for health care from one health care provider
25 or health care facility to another.

26 **Sec. 3.** RCW 70.02.010 and 2016 sp.s. c 29 s 416 are each amended
27 to read as follows:

28 The definitions in this section apply throughout this chapter
29 unless the context clearly requires otherwise.

30 (1) "Admission" has the same meaning as in RCW 71.05.020.

31 (2) "Audit" means an assessment, evaluation, determination, or
32 investigation of a health care provider by a person not employed by
33 or affiliated with the provider to determine compliance with:

34 (a) Statutory, regulatory, fiscal, medical, or scientific
35 standards;

36 (b) A private or public program of payments to a health care
37 provider; or

38 (c) Requirements for licensing, accreditation, or certification.

39 (3) "Commitment" has the same meaning as in RCW 71.05.020.

- 1 (4) "Custody" has the same meaning as in RCW 71.05.020.
- 2 (5) "Deidentified" means health information that does not
3 identify an individual and with respect to which there is no
4 reasonable basis to believe that the information can be used to
5 identify an individual.
- 6 (6) "Department" means the department of social and health
7 services.
- 8 (7) "Designated crisis responder" has the same meaning as in RCW
9 71.05.020 or 71.34.020, as applicable.
- 10 (8) "Detention" or "detain" has the same meaning as in RCW
11 71.05.020.
- 12 (9) "Directory information" means information disclosing the
13 presence, and for the purpose of identification, the name, location
14 within a health care facility, and the general health condition of a
15 particular patient who is a patient in a health care facility or who
16 is currently receiving emergency health care in a health care
17 facility.
- 18 (10) "Discharge" has the same meaning as in RCW 71.05.020.
- 19 (11) "Evaluation and treatment facility" has the same meaning as
20 in RCW 71.05.020 or 71.34.020, as applicable.
- 21 (12) "Federal, state, or local law enforcement authorities" means
22 an officer of any agency or authority in the United States, a state,
23 a tribe, a territory, or a political subdivision of a state, a tribe,
24 or a territory who is empowered by law to: (a) Investigate or conduct
25 an official inquiry into a potential criminal violation of law; or
26 (b) prosecute or otherwise conduct a criminal proceeding arising from
27 an alleged violation of law.
- 28 (13) "General health condition" means the patient's health status
29 described in terms of "critical," "poor," "fair," "good,"
30 "excellent," or terms denoting similar conditions.
- 31 (14) "Health care" means any care, service, or procedure provided
32 by a health care provider:
- 33 (a) To diagnose, treat, or maintain a patient's physical or
34 mental condition; or
- 35 (b) That affects the structure or any function of the human body.
- 36 (15) "Health care facility" means a hospital, clinic, nursing
37 home, laboratory, office, or similar place where a health care
38 provider provides health care to patients.
- 39 (16) "Health care information" means any information, whether
40 oral or recorded in any form or medium, that identifies or can

1 readily be associated with the identity of a patient and directly
2 relates to the patient's health care, including a patient's
3 deoxyribonucleic acid and identified sequence of chemical base pairs.
4 The term includes any required accounting of disclosures of health
5 care information.

6 (17) "Health care operations" means any of the following
7 activities of a health care provider, health care facility, or third-
8 party payor to the extent that the activities are related to
9 functions that make an entity a health care provider, a health care
10 facility, or a third-party payor:

11 (a) Conducting: Quality assessment and improvement activities,
12 including outcomes evaluation and development of clinical guidelines,
13 if the obtaining of generalizable knowledge is not the primary
14 purpose of any studies resulting from such activities; population-
15 based activities relating to improving health or reducing health care
16 costs, protocol development, case management and care coordination,
17 contacting of health care providers and patients with information
18 about treatment alternatives; and related functions that do not
19 include treatment;

20 (b) Reviewing the competence or qualifications of health care
21 professionals, evaluating practitioner and provider performance and
22 third-party payor performance, conducting training programs in which
23 students, trainees, or practitioners in areas of health care learn
24 under supervision to practice or improve their skills as health care
25 providers, training of nonhealth care professionals, accreditation,
26 certification, licensing, or credentialing activities;

27 (c) Underwriting, premium rating, and other activities relating
28 to the creation, renewal, or replacement of a contract of health
29 insurance or health benefits, and ceding, securing, or placing a
30 contract for reinsurance of risk relating to claims for health care,
31 including stop-loss insurance and excess of loss insurance, if any
32 applicable legal requirements are met;

33 (d) Conducting or arranging for medical review, legal services,
34 and auditing functions, including fraud and abuse detection and
35 compliance programs;

36 (e) Business planning and development, such as conducting cost-
37 management and planning-related analyses related to managing and
38 operating the health care facility or third-party payor, including
39 formulary development and administration, development, or improvement
40 of methods of payment or coverage policies; and

1 (f) Business management and general administrative activities of
2 the health care facility, health care provider, or third-party payor
3 including, but not limited to:

4 (i) Management activities relating to implementation of and
5 compliance with the requirements of this chapter;

6 (ii) Customer service, including the provision of data analyses
7 for policy holders, plan sponsors, or other customers, provided that
8 health care information is not disclosed to such policy holder, plan
9 sponsor, or customer;

10 (iii) Resolution of internal grievances;

11 (iv) The sale, transfer, merger, or consolidation of all or part
12 of a health care provider, health care facility, or third-party payor
13 with another health care provider, health care facility, or third-
14 party payor or an entity that following such activity will become a
15 health care provider, health care facility, or third-party payor, and
16 due diligence related to such activity; and

17 (v) Consistent with applicable legal requirements, creating
18 deidentified health care information or a limited dataset for the
19 benefit of the health care provider, health care facility, or third-
20 party payor.

21 (18) "Health care provider" means a person who is licensed,
22 certified, registered, or otherwise authorized by the law of this
23 state to provide health care in the ordinary course of business or
24 practice of a profession.

25 (19) "Human immunodeficiency virus" or "HIV" has the same meaning
26 as in RCW 70.24.017.

27 (20) "Imminent" has the same meaning as in RCW 71.05.020.

28 (21) "Information and records related to mental health services"
29 means a type of health care information that relates to all
30 information and records compiled, obtained, or maintained in the
31 course of providing services by a mental health service agency or
32 mental health professional to persons who are receiving or have
33 received services for mental illness. The term includes mental health
34 information contained in a medical bill, registration records, as
35 defined in RCW 71.05.020, and all other records regarding the person
36 maintained by the department, by regional support networks and their
37 staff, and by treatment facilities. The term further includes
38 documents of legal proceedings under chapter 71.05, 71.34, or 10.77
39 RCW, or somatic health care information. For health care information
40 maintained by a hospital as defined in RCW 70.41.020 or a health care

1 facility or health care provider that participates with a hospital in
2 an organized health care arrangement defined under federal law,
3 "information and records related to mental health services" is
4 limited to information and records of services provided by a mental
5 health professional or information and records of services created by
6 a hospital-operated behavioral health program as defined in RCW
7 71.24.025. The term does not include psychotherapy notes.

8 (22) "Information and records related to sexually transmitted
9 diseases" means a type of health care information that relates to the
10 identity of any person upon whom an HIV antibody test or other
11 sexually transmitted infection test is performed, the results of such
12 tests, and any information relating to diagnosis of or treatment for
13 any confirmed sexually transmitted infections.

14 (23) "Institutional review board" means any board, committee, or
15 other group formally designated by an institution, or authorized
16 under federal or state law, to review, approve the initiation of, or
17 conduct periodic review of research programs to assure the protection
18 of the rights and welfare of human research subjects.

19 (24) "Legal counsel" has the same meaning as in RCW 71.05.020.

20 (25) "Local public health officer" has the same meaning as in RCW
21 70.24.017.

22 (26) "Maintain," as related to health care information, means to
23 hold, possess, preserve, retain, store, or control that information.

24 (27) "Mental health professional" means a psychiatrist,
25 psychologist, psychiatric advanced registered nurse practitioner,
26 psychiatric nurse, or social worker, and such other mental health
27 professionals as may be defined by rules adopted by the secretary of
28 social and health services under chapter 71.05 RCW, whether that
29 person works in a private or public setting.

30 (28) "Mental health service agency" means a public or private
31 agency that provides services to persons with mental disorders as
32 defined under RCW 71.05.020 or 71.34.020 and receives funding from
33 public sources. This includes evaluation and treatment facilities as
34 defined in RCW 71.34.020, community mental health service delivery
35 systems, or behavioral health programs, as defined in RCW 71.24.025,
36 and facilities conducting competency evaluations and restoration
37 under chapter 10.77 RCW.

38 (29) "Minor" has the same meaning as in RCW 71.34.020.

39 (30) "Parent" has the same meaning as in RCW 71.34.020.

1 (31) "Patient" means an individual who receives or has received
2 health care. The term includes a deceased individual who has received
3 health care.

4 (32) "Payment" means:

5 (a) The activities undertaken by:

6 (i) A third-party payor to obtain premiums or to determine or
7 fulfill its responsibility for coverage and provision of benefits by
8 the third-party payor; or

9 (ii) A health care provider, health care facility, or third-party
10 payor, to obtain or provide reimbursement for the provision of health
11 care; and

12 (b) The activities in (a) of this subsection that relate to the
13 patient to whom health care is provided and that include, but are not
14 limited to:

15 (i) Determinations of eligibility or coverage, including
16 coordination of benefits or the determination of cost-sharing
17 amounts, and adjudication or subrogation of health benefit claims;

18 (ii) Risk adjusting amounts due based on enrollee health status
19 and demographic characteristics;

20 (iii) Billing, claims management, collection activities,
21 obtaining payment under a contract for reinsurance, including stop-
22 loss insurance and excess of loss insurance, and related health care
23 data processing;

24 (iv) Review of health care services with respect to medical
25 necessity, coverage under a health plan, appropriateness of care, or
26 justification of charges;

27 (v) Utilization review activities, including precertification and
28 preauthorization of services, and concurrent and retrospective review
29 of services; and

30 (vi) Disclosure to consumer reporting agencies of any of the
31 following health care information relating to collection of premiums
32 or reimbursement:

33 (A) Name and address;

34 (B) Date of birth;

35 (C) Social security number;

36 (D) Payment history;

37 (E) Account number; and

38 (F) Name and address of the health care provider, health care
39 facility, and/or third-party payor.

1 (33) "Person" means an individual, corporation, business trust,
2 estate, trust, partnership, association, joint venture, government,
3 governmental subdivision or agency, or any other legal or commercial
4 entity.

5 (34) "Professional person" has the same meaning as in RCW
6 71.05.020.

7 (35) "Psychiatric advanced registered nurse practitioner" has the
8 same meaning as in RCW 71.05.020.

9 (36) "Psychotherapy notes" means notes recorded, in any medium,
10 by a mental health professional documenting or analyzing the contents
11 of conversations during a private counseling session or group, joint,
12 or family counseling session, and that are separated from the rest of
13 the individual's medical record. The term excludes mediation
14 prescription and monitoring, counseling session start and stop times,
15 the modalities and frequencies of treatment furnished, results of
16 clinical tests, and any summary of the following items: Diagnosis,
17 functional status, the treatment plan, symptoms, prognosis, and
18 progress to date.

19 (37) "Reasonable fee" means the charges for duplicating or
20 searching the record, but shall not exceed sixty-five cents per page
21 for the first thirty pages and fifty cents per page for all other
22 pages. In addition, a clerical fee for searching and handling may be
23 charged not to exceed fifteen dollars. These amounts shall be
24 adjusted biennially in accordance with changes in the consumer price
25 index, all consumers, for Seattle-Tacoma metropolitan statistical
26 area as determined by the secretary of health. However, where editing
27 of records by a health care provider is required by statute and is
28 done by the provider personally, the fee may be the usual and
29 customary charge for a basic office visit.

30 (38) "Release" has the same meaning as in RCW 71.05.020.

31 (39) "Resource management services" has the same meaning as in
32 RCW 71.05.020.

33 (40) "Serious and urgent threat" means a substantial risk of
34 impending physical harm that requires immediate action or attention.

35 (41) "Serious violent offense" has the same meaning as in RCW
36 71.05.020.

37 ~~((41))~~ (42) "Sexually transmitted infection" or "sexually
38 transmitted disease" has the same meaning as "sexually transmitted
39 disease" in RCW 70.24.017.

1 (~~(42)~~) (43) "Test for a sexually transmitted disease" has the
2 same meaning as in RCW 70.24.017.

3 (~~(43)~~) (44) "Third-party payor" means an insurer regulated
4 under Title 48 RCW authorized to transact business in this state or
5 other jurisdiction, including a health care service contractor, and
6 health maintenance organization; or an employee welfare benefit plan,
7 excluding fitness or wellness plans; or a state or federal health
8 benefit program.

9 (~~(44)~~) (45) "Treatment" means the provision, coordination, or
10 management of health care and related services by one or more health
11 care providers or health care facilities, including the coordination
12 or management of health care by a health care provider or health care
13 facility with a third party; consultation between health care
14 providers or health care facilities relating to a patient; or the
15 referral of a patient for health care from one health care provider
16 or health care facility to another.

17 **Sec. 4.** RCW 70.02.050 and 2014 c 220 s 6 are each amended to
18 read as follows:

19 (1) A health care provider or health care facility may disclose
20 health care information, except for information and records related
21 to sexually transmitted diseases which are addressed in RCW
22 70.02.220, about a patient without the patient's authorization to the
23 extent a recipient needs to know the information, if the disclosure
24 is:

25 (a) To a person who the provider or facility reasonably believes
26 is providing health care to the patient;

27 (b) To any other person who requires health care information for
28 health care education, or to provide planning, quality assurance,
29 peer review, or administrative, legal, financial, actuarial services
30 to, or other health care operations for or on behalf of the health
31 care provider or health care facility; or for assisting the health
32 care provider or health care facility in the delivery of health care
33 and the health care provider or health care facility reasonably
34 believes that the person:

35 (i) Will not use or disclose the health care information for any
36 other purpose; and

37 (ii) Will take appropriate steps to protect the health care
38 information;

1 (c) To any person if the health care provider or health care
2 facility reasonably believes that disclosure will avoid or minimize
3 (~~(an imminent danger)~~) a serious and urgent threat to the health or
4 safety of (~~(the patient or any other individual, however)~~) any person
5 or the public, and the information is disclosed only to a person who
6 is reasonably able to prevent or lessen the threat, including the
7 target of the threat. There is no obligation under this chapter on
8 the part of the provider or facility to so disclose(~~(. The fact of~~
9 ~~admission to a provider for mental health services and all~~
10 ~~information and records compiled, obtained, or maintained in the~~
11 ~~course of providing mental health services to either voluntary or~~
12 ~~involuntary recipients of services at public or private agencies is~~
13 ~~not subject to disclosure unless disclosure is permitted in RCW~~
14 ~~70.02.230; or)~~);

15 (d) To any person if the conditions in section 1 of this act are
16 met; or

17 (e) For payment, including information necessary for a recipient
18 to make a claim, or for a claim to be made on behalf of a recipient
19 for aid, insurance, or medical assistance to which he or she may be
20 entitled.

21 (2) A health care provider shall disclose health care
22 information, except for information and records related to sexually
23 transmitted diseases, unless otherwise authorized in RCW 70.02.220,
24 about a patient without the patient's authorization if the disclosure
25 is:

26 (a) To federal, state, or local public health authorities, to the
27 extent the health care provider is required by law to report health
28 care information; when needed to determine compliance with state or
29 federal licensure, certification or registration rules or laws, or to
30 investigate unprofessional conduct or ability to practice with
31 reasonable skill and safety under chapter 18.130 RCW. Any health care
32 information obtained under this subsection is exempt from public
33 inspection and copying pursuant to chapter 42.56 RCW; or

34 (b) When needed to protect the public health.

35 **Sec. 5.** RCW 70.02.230 and 2014 c 225 s 71 and 2014 c 220 s 9 are
36 each reenacted and amended to read as follows:

37 (1) Except as provided in this section, RCW 70.02.050, 71.05.445,
38 (~~(70.96A.150,)~~) 74.09.295, 70.02.210, 70.02.240, 70.02.250, and
39 70.02.260, or pursuant to a valid authorization under RCW 70.02.030,

1 the fact of admission to a provider for mental health services and
2 all information and records compiled, obtained, or maintained in the
3 course of providing mental health services to either voluntary or
4 involuntary recipients of services at public or private agencies must
5 be confidential.

6 (2) Information and records related to mental health services,
7 other than those obtained through treatment under chapter 71.34 RCW,
8 may be disclosed only:

9 (a) In communications between qualified professional persons to
10 meet the requirements of chapter 71.05 RCW, in the provision of
11 services or appropriate referrals, or in the course of guardianship
12 proceedings if provided to a professional person:

13 (i) Employed by the facility;

14 (ii) Who has medical responsibility for the patient's care;

15 (iii) Who is a designated mental health professional;

16 (iv) Who is providing services under chapter 71.24 RCW;

17 (v) Who is employed by a state or local correctional facility
18 where the person is confined or supervised; or

19 (vi) Who is providing evaluation, treatment, or follow-up
20 services under chapter 10.77 RCW;

21 (b) When the communications regard the special needs of a patient
22 and the necessary circumstances giving rise to such needs and the
23 disclosure is made by a facility providing services to the operator
24 of a facility in which the patient resides or will reside;

25 (c)(i) When the person receiving services, or his or her
26 guardian, designates persons to whom information or records may be
27 released, or if the person is a minor, when his or her parents make
28 such a designation;

29 (ii) A public or private agency shall release to a person's next
30 of kin, attorney, personal representative, guardian, or conservator,
31 if any:

32 (A) The information that the person is presently a patient in the
33 facility or that the person is seriously physically ill;

34 (B) A statement evaluating the mental and physical condition of
35 the patient, and a statement of the probable duration of the
36 patient's confinement, if such information is requested by the next
37 of kin, attorney, personal representative, guardian, or conservator;
38 and

1 (iii) Other information requested by the next of kin or attorney
2 as may be necessary to decide whether or not proceedings should be
3 instituted to appoint a guardian or conservator;

4 (d)(i) To the courts as necessary to the administration of
5 chapter 71.05 RCW or to a court ordering an evaluation or treatment
6 under chapter 10.77 RCW solely for the purpose of preventing the
7 entry of any evaluation or treatment order that is inconsistent with
8 any order entered under chapter 71.05 RCW.

9 (ii) To a court or its designee in which a motion under chapter
10 10.77 RCW has been made for involuntary medication of a defendant for
11 the purpose of competency restoration.

12 (iii) Disclosure under this subsection is mandatory for the
13 purpose of the federal health insurance portability and
14 accountability act;

15 (e)(i) When a mental health professional is requested by a
16 representative of a law enforcement or corrections agency, including
17 a police officer, sheriff, community corrections officer, a municipal
18 attorney, or prosecuting attorney to undertake an investigation or
19 provide treatment under RCW 71.05.150, 10.31.110, or 71.05.153, the
20 mental health professional shall, if requested to do so, advise the
21 representative in writing of the results of the investigation
22 including a statement of reasons for the decision to detain or
23 release the person investigated. The written report must be submitted
24 within seventy-two hours of the completion of the investigation or
25 the request from the law enforcement or corrections representative,
26 whichever occurs later.

27 (ii) Disclosure under this subsection is mandatory for the
28 purposes of the federal health insurance portability and
29 accountability act;

30 (f) To the attorney of the detained person;

31 (g) To the prosecuting attorney as necessary to carry out the
32 responsibilities of the office under RCW 71.05.330(2),
33 71.05.340(1)(b), and 71.05.335. The prosecutor must be provided
34 access to records regarding the committed person's treatment and
35 prognosis, medication, behavior problems, and other records relevant
36 to the issue of whether treatment less restrictive than inpatient
37 treatment is in the best interest of the committed person or others.
38 Information must be disclosed only after giving notice to the
39 committed person and the person's counsel;

1 (h)(i) To appropriate law enforcement agencies and to a person,
2 when the identity of the person is known to the public or private
3 agency, whose health and safety has been threatened, or who is known
4 to have been repeatedly harassed, by the patient. The person may
5 designate a representative to receive the disclosure. The disclosure
6 must be made by the professional person in charge of the public or
7 private agency or his or her designee and must include the dates of
8 commitment, admission, discharge, or release, authorized or
9 unauthorized absence from the agency's facility, and only any other
10 information that is pertinent to the threat or harassment. The agency
11 or its employees are not civilly liable for the decision to disclose
12 or not, so long as the decision was reached in good faith and without
13 gross negligence.

14 (ii) Disclosure under this subsection is mandatory for the
15 purposes of the federal health insurance portability and
16 accountability act;

17 (i)(i) To appropriate corrections and law enforcement agencies
18 all necessary and relevant information in the event of a crisis or
19 emergent situation that poses a significant and imminent risk to the
20 public. The mental health service agency or its employees are not
21 civilly liable for the decision to disclose or not so long as the
22 decision was reached in good faith and without gross negligence.

23 (ii) Disclosure under this subsection is mandatory for the
24 purposes of the health insurance portability and accountability act;

25 (j) To the persons designated in RCW 71.05.425 for the purposes
26 described in those sections;

27 (k) Upon the death of a person. The person's next of kin,
28 personal representative, guardian, or conservator, if any, must be
29 notified. Next of kin who are of legal age and competent must be
30 notified under this section in the following order: Spouse, parents,
31 children, brothers and sisters, and other relatives according to the
32 degree of relation. Access to all records and information compiled,
33 obtained, or maintained in the course of providing services to a
34 deceased patient are governed by RCW 70.02.140;

35 (l) To mark headstones or otherwise memorialize patients interred
36 at state hospital cemeteries. The department of social and health
37 services shall make available the name, date of birth, and date of
38 death of patients buried in state hospital cemeteries fifty years
39 after the death of a patient;

1 (m) To law enforcement officers and to prosecuting attorneys as
2 are necessary to enforce RCW 9.41.040(2)(a)(~~(ii)~~) (iii). The extent
3 of information that may be released is limited as follows:

4 (i) Only the fact, place, and date of involuntary commitment, an
5 official copy of any order or orders of commitment, and an official
6 copy of any written or oral notice of ineligibility to possess a
7 firearm that was provided to the person pursuant to RCW 9.41.047(1),
8 must be disclosed upon request;

9 (ii) The law enforcement and prosecuting attorneys may only
10 release the information obtained to the person's attorney as required
11 by court rule and to a jury or judge, if a jury is waived, that
12 presides over any trial at which the person is charged with violating
13 RCW 9.41.040(2)(a)(~~(ii)~~) (iii);

14 (iii) Disclosure under this subsection is mandatory for the
15 purposes of the federal health insurance portability and
16 accountability act;

17 (n) When a patient would otherwise be subject to the provisions
18 of this section and disclosure is necessary for the protection of the
19 patient or others due to his or her unauthorized disappearance from
20 the facility, and his or her whereabouts is unknown, notice of the
21 disappearance, along with relevant information, may be made to
22 relatives, the department of corrections when the person is under the
23 supervision of the department, and governmental law enforcement
24 agencies designated by the physician or psychiatric advanced
25 registered nurse practitioner in charge of the patient or the
26 professional person in charge of the facility, or his or her
27 professional designee;

28 (o) Pursuant to lawful order of a court;

29 (p) To qualified staff members of the department, to the director
30 of behavioral health organizations, to resource management services
31 responsible for serving a patient, or to service providers designated
32 by resource management services as necessary to determine the
33 progress and adequacy of treatment and to determine whether the
34 person should be transferred to a less restrictive or more
35 appropriate treatment modality or facility;

36 (q) Within the mental health service agency where the patient is
37 receiving treatment, confidential information may be disclosed to
38 persons employed, serving in bona fide training programs, or
39 participating in supervised volunteer programs, at the facility when
40 it is necessary to perform their duties;

1 (r) Within the department as necessary to coordinate treatment
2 for mental illness, developmental disabilities, alcoholism, or drug
3 abuse of persons who are under the supervision of the department;

4 (s) To a licensed physician or psychiatric advanced registered
5 nurse practitioner who has determined that the life or health of the
6 person is in danger and that treatment without the information and
7 records related to mental health services could be injurious to the
8 patient's health. Disclosure must be limited to the portions of the
9 records necessary to meet the medical emergency;

10 (t) Consistent with the requirements of the federal health
11 information portability and accountability act, to a licensed mental
12 health professional or a health care professional licensed under
13 chapter 18.71, 18.71A, 18.57, 18.57A, 18.79, or 18.36A RCW who is
14 providing care to a person, or to whom a person has been referred for
15 evaluation or treatment, to assure coordinated care and treatment of
16 that person. Psychotherapy notes may not be released without
17 authorization of the person who is the subject of the request for
18 release of information;

19 (u) To administrative and office support staff designated to
20 obtain medical records for those licensed professionals listed in (t)
21 of this subsection;

22 (v) To a facility that is to receive a person who is
23 involuntarily committed under chapter 71.05 RCW, or upon transfer of
24 the person from one evaluation and treatment facility to another. The
25 release of records under this subsection is limited to the
26 information and records related to mental health services required by
27 law, a record or summary of all somatic treatments, and a discharge
28 summary. The discharge summary may include a statement of the
29 patient's problem, the treatment goals, the type of treatment which
30 has been provided, and recommendation for future treatment, but may
31 not include the patient's complete treatment record;

32 (w) To the person's counsel or guardian ad litem, without
33 modification, at any time in order to prepare for involuntary
34 commitment or recommitment proceedings, reexaminations, appeals, or
35 other actions relating to detention, admission, commitment, or
36 patient's rights under chapter 71.05 RCW;

37 (x) To staff members of the protection and advocacy agency or to
38 staff members of a private, nonprofit corporation for the purpose of
39 protecting and advocating the rights of persons with mental disorders
40 or developmental disabilities. Resource management services may limit

1 the release of information to the name, birthdate, and county of
2 residence of the patient, information regarding whether the patient
3 was voluntarily admitted, or involuntarily committed, the date and
4 place of admission, placement, or commitment, the name and address of
5 a guardian of the patient, and the date and place of the guardian's
6 appointment. Any staff member who wishes to obtain additional
7 information must notify the patient's resource management services in
8 writing of the request and of the resource management services' right
9 to object. The staff member shall send the notice by mail to the
10 guardian's address. If the guardian does not object in writing within
11 fifteen days after the notice is mailed, the staff member may obtain
12 the additional information. If the guardian objects in writing within
13 fifteen days after the notice is mailed, the staff member may not
14 obtain the additional information;

15 (y) To all current treating providers of the patient with
16 prescriptive authority who have written a prescription for the
17 patient within the last twelve months. For purposes of coordinating
18 health care, the department may release without written authorization
19 of the patient, information acquired for billing and collection
20 purposes as described in RCW 70.02.050(1)(d). The department shall
21 notify the patient that billing and collection information has been
22 released to named providers, and provide the substance of the
23 information released and the dates of such release. The department
24 may not release counseling, inpatient psychiatric hospitalization, or
25 drug and alcohol treatment information without a signed written
26 release from the client;

27 (z)(i) To the secretary of social and health services for either
28 program evaluation or research, or both so long as the secretary
29 adopts rules for the conduct of the evaluation or research, or both.
30 Such rules must include, but need not be limited to, the requirement
31 that all evaluators and researchers sign an oath of confidentiality
32 substantially as follows:

33 "As a condition of conducting evaluation or research concerning
34 persons who have received services from (fill in the facility,
35 agency, or person) I,, agree not to divulge, publish, or
36 otherwise make known to unauthorized persons or the public any
37 information obtained in the course of such evaluation or research
38 regarding persons who have received services such that the person who
39 received such services is identifiable.

1 I recognize that unauthorized release of confidential information
2 may subject me to civil liability under the provisions of state law.
3 /s/"

4 (ii) Nothing in this chapter may be construed to prohibit the
5 compilation and publication of statistical data for use by government
6 or researchers under standards, including standards to assure
7 maintenance of confidentiality, set forth by the secretary;

8 (aa) To any person if the conditions in section 1 of this act are
9 met.

10 (3) Whenever federal law or federal regulations restrict the
11 release of information contained in the information and records
12 related to mental health services of any patient who receives
13 treatment for chemical dependency, the department may restrict the
14 release of the information as necessary to comply with federal law
15 and regulations.

16 (4) Civil liability and immunity for the release of information
17 about a particular person who is committed to the department of
18 social and health services under RCW 71.05.280(3) and
19 71.05.320(~~(3)~~) (4)(c) after dismissal of a sex offense as defined
20 in RCW 9.94A.030, is governed by RCW 4.24.550.

21 (5) The fact of admission to a provider of mental health
22 services, as well as all records, files, evidence, findings, or
23 orders made, prepared, collected, or maintained pursuant to chapter
24 71.05 RCW are not admissible as evidence in any legal proceeding
25 outside that chapter without the written authorization of the person
26 who was the subject of the proceeding except as provided in RCW
27 70.02.260, in a subsequent criminal prosecution of a person committed
28 pursuant to RCW 71.05.280(3) or 71.05.320(~~(3)~~) (4)(c) on charges
29 that were dismissed pursuant to chapter 10.77 RCW due to incompetency
30 to stand trial, in a civil commitment proceeding pursuant to chapter
31 71.09 RCW, or, in the case of a minor, a guardianship or dependency
32 proceeding. The records and files maintained in any court proceeding
33 pursuant to chapter 71.05 RCW must be confidential and available
34 subsequent to such proceedings only to the person who was the subject
35 of the proceeding or his or her attorney. In addition, the court may
36 order the subsequent release or use of such records or files only
37 upon good cause shown if the court finds that appropriate safeguards
38 for strict confidentiality are and will be maintained.

1 (6)(a) Except as provided in RCW 4.24.550, any person may bring
2 an action against an individual who has willfully released
3 confidential information or records concerning him or her in
4 violation of the provisions of this section, for the greater of the
5 following amounts:

6 (i) One thousand dollars; or

7 (ii) Three times the amount of actual damages sustained, if any.

8 (b) It is not a prerequisite to recovery under this subsection
9 that the plaintiff suffered or was threatened with special, as
10 contrasted with general, damages.

11 (c) Any person may bring an action to enjoin the release of
12 confidential information or records concerning him or her or his or
13 her ward, in violation of the provisions of this section, and may in
14 the same action seek damages as provided in this subsection.

15 (d) The court may award to the plaintiff, should he or she
16 prevail in any action authorized by this subsection, reasonable
17 attorney fees in addition to those otherwise provided by law.

18 (e) If an action is brought under this subsection, no action may
19 be brought under RCW 70.02.170.

20 **Sec. 6.** RCW 70.02.230 and 2016 sp.s. c 29 s 417 are each amended
21 to read as follows:

22 (1) Except as provided in this section, RCW 70.02.050, 71.05.445,
23 74.09.295, 70.02.210, 70.02.240, 70.02.250, and 70.02.260, or
24 pursuant to a valid authorization under RCW 70.02.030, the fact of
25 admission to a provider for mental health services and all
26 information and records compiled, obtained, or maintained in the
27 course of providing mental health services to either voluntary or
28 involuntary recipients of services at public or private agencies must
29 be confidential.

30 (2) Information and records related to mental health services,
31 other than those obtained through treatment under chapter 71.34 RCW,
32 may be disclosed only:

33 (a) In communications between qualified professional persons to
34 meet the requirements of chapter 71.05 RCW, in the provision of
35 services or appropriate referrals, or in the course of guardianship
36 proceedings if provided to a professional person:

37 (i) Employed by the facility;

38 (ii) Who has medical responsibility for the patient's care;

39 (iii) Who is a designated crisis responder;

1 (iv) Who is providing services under chapter 71.24 RCW;
2 (v) Who is employed by a state or local correctional facility
3 where the person is confined or supervised; or
4 (vi) Who is providing evaluation, treatment, or follow-up
5 services under chapter 10.77 RCW;

6 (b) When the communications regard the special needs of a patient
7 and the necessary circumstances giving rise to such needs and the
8 disclosure is made by a facility providing services to the operator
9 of a facility in which the patient resides or will reside;

10 (c)(i) When the person receiving services, or his or her
11 guardian, designates persons to whom information or records may be
12 released, or if the person is a minor, when his or her parents make
13 such a designation;

14 (ii) A public or private agency shall release to a person's next
15 of kin, attorney, personal representative, guardian, or conservator,
16 if any:

17 (A) The information that the person is presently a patient in the
18 facility or that the person is seriously physically ill;

19 (B) A statement evaluating the mental and physical condition of
20 the patient, and a statement of the probable duration of the
21 patient's confinement, if such information is requested by the next
22 of kin, attorney, personal representative, guardian, or conservator;
23 and

24 (iii) Other information requested by the next of kin or attorney
25 as may be necessary to decide whether or not proceedings should be
26 instituted to appoint a guardian or conservator;

27 (d)(i) To the courts as necessary to the administration of
28 chapter 71.05 RCW or to a court ordering an evaluation or treatment
29 under chapter 10.77 RCW solely for the purpose of preventing the
30 entry of any evaluation or treatment order that is inconsistent with
31 any order entered under chapter 71.05 RCW.

32 (ii) To a court or its designee in which a motion under chapter
33 10.77 RCW has been made for involuntary medication of a defendant for
34 the purpose of competency restoration.

35 (iii) Disclosure under this subsection is mandatory for the
36 purpose of the federal health insurance portability and
37 accountability act;

38 (e)(i) When a mental health professional or designated crisis
39 responder is requested by a representative of a law enforcement or
40 corrections agency, including a police officer, sheriff, community

1 corrections officer, a municipal attorney, or prosecuting attorney to
2 undertake an investigation or provide treatment under RCW 71.05.150,
3 10.31.110, or 71.05.153, the mental health professional or designated
4 crisis responder shall, if requested to do so, advise the
5 representative in writing of the results of the investigation
6 including a statement of reasons for the decision to detain or
7 release the person investigated. The written report must be submitted
8 within seventy-two hours of the completion of the investigation or
9 the request from the law enforcement or corrections representative,
10 whichever occurs later.

11 (ii) Disclosure under this subsection is mandatory for the
12 purposes of the federal health insurance portability and
13 accountability act;

14 (f) To the attorney of the detained person;

15 (g) To the prosecuting attorney as necessary to carry out the
16 responsibilities of the office under RCW 71.05.330(2),
17 71.05.340(1)(b), and 71.05.335. The prosecutor must be provided
18 access to records regarding the committed person's treatment and
19 prognosis, medication, behavior problems, and other records relevant
20 to the issue of whether treatment less restrictive than inpatient
21 treatment is in the best interest of the committed person or others.
22 Information must be disclosed only after giving notice to the
23 committed person and the person's counsel;

24 (h)(i) To appropriate law enforcement agencies and to a person,
25 when the identity of the person is known to the public or private
26 agency, whose health and safety has been threatened, or who is known
27 to have been repeatedly harassed, by the patient. The person may
28 designate a representative to receive the disclosure. The disclosure
29 must be made by the professional person in charge of the public or
30 private agency or his or her designee and must include the dates of
31 commitment, admission, discharge, or release, authorized or
32 unauthorized absence from the agency's facility, and only any other
33 information that is pertinent to the threat or harassment. The agency
34 or its employees are not civilly liable for the decision to disclose
35 or not, so long as the decision was reached in good faith and without
36 gross negligence.

37 (ii) Disclosure under this subsection is mandatory for the
38 purposes of the federal health insurance portability and
39 accountability act;

1 (i)(i) To appropriate corrections and law enforcement agencies
2 all necessary and relevant information in the event of a crisis or
3 emergent situation that poses a significant and imminent risk to the
4 public. The mental health service agency or its employees are not
5 civilly liable for the decision to disclose or not so long as the
6 decision was reached in good faith and without gross negligence.

7 (ii) Disclosure under this subsection is mandatory for the
8 purposes of the health insurance portability and accountability act;

9 (j) To the persons designated in RCW 71.05.425 for the purposes
10 described in those sections;

11 (k) Upon the death of a person. The person's next of kin,
12 personal representative, guardian, or conservator, if any, must be
13 notified. Next of kin who are of legal age and competent must be
14 notified under this section in the following order: Spouse, parents,
15 children, brothers and sisters, and other relatives according to the
16 degree of relation. Access to all records and information compiled,
17 obtained, or maintained in the course of providing services to a
18 deceased patient are governed by RCW 70.02.140;

19 (l) To mark headstones or otherwise memorialize patients interred
20 at state hospital cemeteries. The department of social and health
21 services shall make available the name, date of birth, and date of
22 death of patients buried in state hospital cemeteries fifty years
23 after the death of a patient;

24 (m) To law enforcement officers and to prosecuting attorneys as
25 are necessary to enforce RCW 9.41.040(2)(a)(iii). The extent of
26 information that may be released is limited as follows:

27 (i) Only the fact, place, and date of involuntary commitment, an
28 official copy of any order or orders of commitment, and an official
29 copy of any written or oral notice of ineligibility to possess a
30 firearm that was provided to the person pursuant to RCW 9.41.047(1),
31 must be disclosed upon request;

32 (ii) The law enforcement and prosecuting attorneys may only
33 release the information obtained to the person's attorney as required
34 by court rule and to a jury or judge, if a jury is waived, that
35 presides over any trial at which the person is charged with violating
36 RCW 9.41.040(2)(a)(iii);

37 (iii) Disclosure under this subsection is mandatory for the
38 purposes of the federal health insurance portability and
39 accountability act;

1 (n) When a patient would otherwise be subject to the provisions
2 of this section and disclosure is necessary for the protection of the
3 patient or others due to his or her unauthorized disappearance from
4 the facility, and his or her whereabouts is unknown, notice of the
5 disappearance, along with relevant information, may be made to
6 relatives, the department of corrections when the person is under the
7 supervision of the department, and governmental law enforcement
8 agencies designated by the physician or psychiatric advanced
9 registered nurse practitioner in charge of the patient or the
10 professional person in charge of the facility, or his or her
11 professional designee;

12 (o) Pursuant to lawful order of a court;

13 (p) To qualified staff members of the department, to the director
14 of behavioral health organizations, to resource management services
15 responsible for serving a patient, or to service providers designated
16 by resource management services as necessary to determine the
17 progress and adequacy of treatment and to determine whether the
18 person should be transferred to a less restrictive or more
19 appropriate treatment modality or facility;

20 (q) Within the mental health service agency where the patient is
21 receiving treatment, confidential information may be disclosed to
22 persons employed, serving in bona fide training programs, or
23 participating in supervised volunteer programs, at the facility when
24 it is necessary to perform their duties;

25 (r) Within the department as necessary to coordinate treatment
26 for mental illness, developmental disabilities, alcoholism, or drug
27 abuse of persons who are under the supervision of the department;

28 (s) To a licensed physician or psychiatric advanced registered
29 nurse practitioner who has determined that the life or health of the
30 person is in danger and that treatment without the information and
31 records related to mental health services could be injurious to the
32 patient's health. Disclosure must be limited to the portions of the
33 records necessary to meet the medical emergency;

34 (t) Consistent with the requirements of the federal health
35 information portability and accountability act, to a licensed mental
36 health professional or a health care professional licensed under
37 chapter 18.71, 18.71A, 18.57, 18.57A, 18.79, or 18.36A RCW who is
38 providing care to a person, or to whom a person has been referred for
39 evaluation or treatment, to assure coordinated care and treatment of
40 that person. Psychotherapy notes may not be released without

1 authorization of the person who is the subject of the request for
2 release of information;

3 (u) To administrative and office support staff designated to
4 obtain medical records for those licensed professionals listed in (t)
5 of this subsection;

6 (v) To a facility that is to receive a person who is
7 involuntarily committed under chapter 71.05 RCW, or upon transfer of
8 the person from one evaluation and treatment facility to another. The
9 release of records under this subsection is limited to the
10 information and records related to mental health services required by
11 law, a record or summary of all somatic treatments, and a discharge
12 summary. The discharge summary may include a statement of the
13 patient's problem, the treatment goals, the type of treatment which
14 has been provided, and recommendation for future treatment, but may
15 not include the patient's complete treatment record;

16 (w) To the person's counsel or guardian ad litem, without
17 modification, at any time in order to prepare for involuntary
18 commitment or recommitment proceedings, reexaminations, appeals, or
19 other actions relating to detention, admission, commitment, or
20 patient's rights under chapter 71.05 RCW;

21 (x) To staff members of the protection and advocacy agency or to
22 staff members of a private, nonprofit corporation for the purpose of
23 protecting and advocating the rights of persons with mental disorders
24 or developmental disabilities. Resource management services may limit
25 the release of information to the name, birthdate, and county of
26 residence of the patient, information regarding whether the patient
27 was voluntarily admitted, or involuntarily committed, the date and
28 place of admission, placement, or commitment, the name and address of
29 a guardian of the patient, and the date and place of the guardian's
30 appointment. Any staff member who wishes to obtain additional
31 information must notify the patient's resource management services in
32 writing of the request and of the resource management services' right
33 to object. The staff member shall send the notice by mail to the
34 guardian's address. If the guardian does not object in writing within
35 fifteen days after the notice is mailed, the staff member may obtain
36 the additional information. If the guardian objects in writing within
37 fifteen days after the notice is mailed, the staff member may not
38 obtain the additional information;

39 (y) To all current treating providers of the patient with
40 prescriptive authority who have written a prescription for the

1 patient within the last twelve months. For purposes of coordinating
2 health care, the department may release without written authorization
3 of the patient, information acquired for billing and collection
4 purposes as described in RCW 70.02.050(1)(d). The department shall
5 notify the patient that billing and collection information has been
6 released to named providers, and provide the substance of the
7 information released and the dates of such release. The department
8 may not release counseling, inpatient psychiatric hospitalization, or
9 drug and alcohol treatment information without a signed written
10 release from the client;

11 (z)(i) To the secretary of social and health services for either
12 program evaluation or research, or both so long as the secretary
13 adopts rules for the conduct of the evaluation or research, or both.
14 Such rules must include, but need not be limited to, the requirement
15 that all evaluators and researchers sign an oath of confidentiality
16 substantially as follows:

17 "As a condition of conducting evaluation or research concerning
18 persons who have received services from (fill in the facility,
19 agency, or person) I,, agree not to divulge, publish, or
20 otherwise make known to unauthorized persons or the public any
21 information obtained in the course of such evaluation or research
22 regarding persons who have received services such that the person who
23 received such services is identifiable.

24 I recognize that unauthorized release of confidential information
25 may subject me to civil liability under the provisions of state law.
26 /s/"

27 (ii) Nothing in this chapter may be construed to prohibit the
28 compilation and publication of statistical data for use by government
29 or researchers under standards, including standards to assure
30 maintenance of confidentiality, set forth by the secretary;

31 (aa) To any person if the conditions in section 1 of this act are
32 met.

33 (3) Whenever federal law or federal regulations restrict the
34 release of information contained in the information and records
35 related to mental health services of any patient who receives
36 treatment for chemical dependency, the department may restrict the
37 release of the information as necessary to comply with federal law
38 and regulations.

1 (4) Civil liability and immunity for the release of information
2 about a particular person who is committed to the department of
3 social and health services under RCW 71.05.280(3) and 71.05.320(4)(c)
4 after dismissal of a sex offense as defined in RCW 9.94A.030, is
5 governed by RCW 4.24.550.

6 (5) The fact of admission to a provider of mental health
7 services, as well as all records, files, evidence, findings, or
8 orders made, prepared, collected, or maintained pursuant to chapter
9 71.05 RCW are not admissible as evidence in any legal proceeding
10 outside that chapter without the written authorization of the person
11 who was the subject of the proceeding except as provided in RCW
12 70.02.260, in a subsequent criminal prosecution of a person committed
13 pursuant to RCW 71.05.280(3) or 71.05.320(4)(c) on charges that were
14 dismissed pursuant to chapter 10.77 RCW due to incompetency to stand
15 trial, in a civil commitment proceeding pursuant to chapter 71.09
16 RCW, or, in the case of a minor, a guardianship or dependency
17 proceeding. The records and files maintained in any court proceeding
18 pursuant to chapter 71.05 RCW must be confidential and available
19 subsequent to such proceedings only to the person who was the subject
20 of the proceeding or his or her attorney. In addition, the court may
21 order the subsequent release or use of such records or files only
22 upon good cause shown if the court finds that appropriate safeguards
23 for strict confidentiality are and will be maintained.

24 (6)(a) Except as provided in RCW 4.24.550, any person may bring
25 an action against an individual who has willfully released
26 confidential information or records concerning him or her in
27 violation of the provisions of this section, for the greater of the
28 following amounts:

29 (i) One thousand dollars; or

30 (ii) Three times the amount of actual damages sustained, if any.

31 (b) It is not a prerequisite to recovery under this subsection
32 that the plaintiff suffered or was threatened with special, as
33 contrasted with general, damages.

34 (c) Any person may bring an action to enjoin the release of
35 confidential information or records concerning him or her or his or
36 her ward, in violation of the provisions of this section, and may in
37 the same action seek damages as provided in this subsection.

38 (d) The court may award to the plaintiff, should he or she
39 prevail in any action authorized by this subsection, reasonable
40 attorney fees in addition to those otherwise provided by law.

1 (e) If an action is brought under this subsection, no action may
2 be brought under RCW 70.02.170.

3 NEW SECTION. **Sec. 7.** Sections 3 and 6 of this act take effect
4 April 1, 2018.

5 NEW SECTION. **Sec. 8.** Sections 2 and 5 of this act expire April
6 1, 2018.

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